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10/657,611	09/08/2003	Per Elgard Pedersen	6523.200-US	9451
23650 7590 04/20/2009 NOVO NORDISK, INC. INTELLECTUAL PROPERTY DEPARTMENT 100 COLLEGE ROAD WEST PRINCETON, NJ 08540				
EXAMINER CAMPBELL, VICTORIA P				
ART UNIT 3763		PAPER NUMBER		
NOTIFICATION DATE 04/20/2009		DELIVERY MODE ELECTRONIC		

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/657,611
Filing Date: September 08, 2003
Appellant(s): PEDERSEN ET AL.

Marc A. Began
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed March 2, 2009 appealing from the Office action mailed June 27, 2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by USPN 5,935,430 to Craig. Regarding the instant claims, Craig teaches the following: A flow restrictor (Fig. 5, #312) comprising: a flow channel (Fig. 5, #334A and #334B) formed between at least a first member (Fig. 5, #314) and a second member (Fig. 5, #316) arranged in engagement with each other (Col. 11, lines 46-52), the flow channel having an inlet end portion in fluid communication with an inlet opening and an outlet end portion in fluid communication with an outlet opening (Fig. 5, apertures #338; Col. 10, lines 60-67), the flow channel comprising a generally U-formed portion with a pair of opposed first and second channel portions (Fig. 5, #334A and #334B; examiner interprets the end portion of a channel midway down Figure 5 on the right hand side to be connected to the portion of channel labeled by call-out #334B, thus making a U-shaped channel), and a safety channel arranged between the opposed first and second channel portions (Fig. 5, #321A and #321B), the safety channel comprising an end portion in fluid communication with an exterior space relative to the flow restrictor (no end portion of any of the embodiments in Figures 1-5 is shown; examiner interprets moats #321A and #321B to be open to the exterior, see also col. 10, lines 38-43).

(10) Response to Argument

Regarding applicant's argument that there is no disclosure in Craig of the safety channel being open to the exterior and that the examiner's interpretation of the reference is unfounded, the examiner respectfully disagrees. The examiner notes that the moat structures, in addition to being "other surface features" of the device, are also channels in their own right and thus may be provided with ports or apertures per Col.

10, lines 38-43. Additionally, Figure 5 upon which the applicant relies (applicant stated Figure 4 in the Appeal Brief but based on reference characters used, the examiner has assumed Figure 5) to show a lack of apertures in the moats is incomplete and therefore can not be conclusively relied upon to show either the presence or absence of an aperture.

Regarding applicant's argument that the examiner does not provide explanation of where the transient fluids would drain or what other structure would accumulate these fluids outside of the moat, the examiner notes that neither of these limitations is claimed and therefore the examiner is not required to provide such information or explanation.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Victoria P Campbell/

Victoria P Campbell

Examiner, AU 3763

Conferees:

/Nicholas D Lucchesi/

Supervisory Patent Examiner, Art Unit 3763

/Tatyana Zalukaeva/

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